

Applicant: Kaever et al.
Application No.: 10/576,973

Remarks

Claims 17 to 23 were pending in this application and have been rejected. Claim 20 is canceled.

In the Drawings

The drawings were objected to because the drawings filed with a December 10, 2008 response were not properly labeled as "Replacement" or "New." The drawings submitted on December 10, 2008 were submitted with a substitute specification. Those drawings are the original drawings filed with the application, and were not amended, new or replacements. Therefore, no new drawing sheets are necessary because the drawings were simply re-submitted as a courtesy.

Rejection Under 35 U.S.C. §112

Claims 17 to 23 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention because the claims use the term "attempting to read." Applicants respectfully disagree with the examiner on this point, but amended the claims to use other terminology. This rejection is traversed.

Rejection Under 35 U.S.C. §102

Claims 17 to 20 were rejected under 35 U.S.C. §102(e) as being anticipated by *Ericsson et al.*, U.S. Patent 7,263,948.

Claims 17 to 20, and 23 were rejected under 35 U.S.C. §102(b) as being anticipated by *Bazin et al.*, U.S. Patent 5,743,209. Claims 17 to 20, and 22 were rejected under 35 U.S.C. §102(b) as being anticipated by *Guo*, U.S. Publication 2003/0140860.

To maintain a rejection under 35 U.S.C. §102(b), all of the elements of each claim must be disclosed in a single reference. The test for anticipation requires a strict, not substantial, identify of corresponding claim elements. *Finisar Corp. v. DirecTV Group, Inc.*, 523 F.3d 1323, 1334-35, 2008 U.S. Appl. LEXIS 8404, 27-28 (Fed. Cir. 2008).

Ericsson et al.

Ericsson et al. discloses an area with only one milking station. It may be that the cows enter subsequently into the milking station, but *Ericsson et al.* fails to disclose that a plurality of cows are milked at several milking stations. Therefore, *Ericsson et al.* does not disclose assigning a number to the dairy animal, whereby the number corresponds to a stall in which the dairy animal will be milked.

Ericsson et al. discloses reading identification data for the dairy animals with a sensor (18b) that interacts with an information storage device carried by the dairy animal. In col. 3, lines 39 to 47, it states that the sensor is disposed in a robotic arm. The control device is capable of controlling the robot to grip the teat cups and apply them to the teats of the cow. The control device is connected to the sensor that senses an animal's teats.

Claim 17 as amended, recites an identification step for the dairy animal with a sensor that interacts with an information storage device carried by the dairy animal. This identification step is not comparable with the "identification step" of a teat of the animal as described by *Ericsson et al.* Furthermore, *Ericsson et al.* does not disclose that the number and the result of the identification step forms an information unit which is available to the stalls at which the animals are located. This step is important in the invention because it enables milking operations to be unique for each given animal. This feature is not disclosed in *Ericsson et al.*

Bazin et al.

Bazin et al. discloses that each animal is identified at the milking stall. The identification of the animal can be carried out automatically or by the operator (Col. 11, lines 11 to 13 and col. 13, lines 35 to 37). In *Bazin et al.*, the animal identification code is entered in the system control means when a corresponding individual dairy animal is present at the milking machine. *Bazin et al.* does not disclose that a number is assigned to the dairy animal, or that the number corresponds to a stall in which the dairy animal will be milked. Furthermore, *Bazin et al.* does not disclose an information unit comprising the stall number or the identification data. Thus, the claims are not anticipated by *Bazin et al.* because there is no strict correspondence between the disclosure of *Bazin et al.* and the elements of the recited claims. This is particularly true of the dependent claims related to sensing movement and speed of dairy animals in the milking parlor.

Guo

Guo discloses a transport cart for transporting and presenting the animal to the milk stall. The transport cart can be provided with a RFID reader. The reader identifies the animal in the transport cart as described in paragraph 0076.

Guo discloses a relationship between a transport cart, the animal in the transport cart, and the milking stall, but *Guo* does not disclose that a number is assigned to the dairy animal, whereby the number corresponds to stall in which the dairy animal will be milked. Furthermore, *Guo* does not disclose an information unit in which the stall number and identification data are stored, made available to the stall, and used to control a milking operation. Thus, the claims are not anticipated by *Guo* because there is no strict correspondence between the disclosure of *Guo* and the elements of the recited claims. This is particularly true of the dependent claims.

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Rejection Under 35 U.S.C. §103

Claim 21 was rejected under 35 U.S.C. 35 U.S.C. §103 as being unpatentable over *Guo*.

To establish a *prima facie* case of obviousness a three-prong test must be met. First, there must be some suggestion or motivation, either in the references or in the knowledge generally available among those of ordinary skills in the art, to modify the reference. Second, there must be a reasonable expectation of success found in the prior art. Third, the prior art reference must teach or suggest all the claim limitations. *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991). See M.P.E.P. §2143. This is modified by the motivation flowing from (1) the prior art references, (2) the knowledge of the skilled technologist, or (3) the nature of the problem being solved. *In re Dembiczak*, 775 F. 3d 994 (Fed. Cir. 1999). This rule has been clarified as being flexible in allowing a reason to combine that may not be limited to a teaching, suggestion or motivation. *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727 (2007).

Obviousness is not to be read into an invention on the basis of the Applicant's own statements; that is, the prior art must be viewed without reading into that art Applicant's teachings. *In re Murray*, 268 F. 2d 226, 46 CCPA 905; *In re Sporck*, 301 F.2d 686, 49 CCPA 1039. The issue, then, is whether the teachings of the prior art would, in and of themselves and without the benefits of Applicant's disclosure, make the invention as a whole, obvious. *In re Leonor*, 395 F.2d 801, 55 CCPA 1198. *Application of Nomiya*, 509 F.2d 566, 571-72, Cust.Pat.App., 1975.

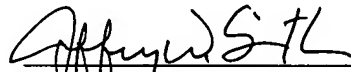
In this case there is: no teaching, motivation or suggestion in *Guo* to determine the speed of an animal moving through a dairy; no expectation of success in modifying *Guo* to arrive at the claimed invention; and not all of the recited limitations are disclosed in *Guo*. Thus, claim 21 would not have been obvious, and that claim is allowable.

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Conclusion

For the foregoing reasons, Applicants respectfully submit that the claims are allowable, and that the present application should be passed to issue.

Respectfully submitted,



Jeffrey W. Smith, Reg. No. 33455
Attorney for Applicant
SMITH LAW OFFICE
8000 Excelsior Drive, Suite 301
Madison, WI 53717
(608) 824-8300